

The Report of Survey System: For the Army and For You

“Soldiers and Department of the Army civilian employees must properly care for government property for which they have responsibility. If either soldier or civilian employee breaches his duty of care toward the government property, and it causes a loss or damage, the individual might have to compensate the government for all or a portion of any loss or damage.” (Administrative & Civil Law Dep’t, The Judge Advocate General’s School, U.S. Army, JA 231, Reports of Survey and Line of Duty Determinations (1 Jul 2002))

The above passage explains in a nutshell the Department of the Army’s (DA) Report of Survey (ROS) system. As soldiers and civilian employees, many of us have as a part of our job duties responsibility for government property. With this responsibility comes a duty to maintain and care for the property to ensure it is not lost, damaged, or destroyed. Failure to meet this duty may mean we stand to lose a portion of our monthly pay, an amount equal to an entire month’s pay, or even more depending on the type of government property lost.

A loss of government property includes a complete physical loss, damage to the property, or total destruction. It also includes a loss of accountability. So, if you are responsible for government property that you know is somewhere in your office or unit, but you’re just not sure where, then you may still be on the hook if a ROS is initiated.

How much will have to be paid? Well, that depends. How much a soldier or civilian employee will be held responsible for will depend on the type of property lost and the amount of monthly pay. An E-2 earning \$1,200 in base pay a month who causes \$2,000 worth of damage to a \$15,000 government vehicle due to simple negligence can look forward to missing \$1,200. An E-4 earning \$1,600 in monthly base pay who, after finding out his wife is cheating on him, angrily causes \$3,000 worth of damage to government quarters and furniture can kiss \$3,000 good-bye. This may seem unfair, but the ROS regulation, Army Regulation 735-5, requires the individual that causes a loss, damage, or destruction to Government quarters be held responsible for the full amount of the loss. The same applies for personal arms and equipment.

Many individuals including survey officers understand the “who” and “how money is taken” portions of the ROS system, but do not understand the standard used to determine when and if a person is held liable. An individual may be held liable for the loss, damage or destruction of government property if the “proximate cause” of the loss is that individual’s negligence or misconduct. This means that the person disregarded proper care for the property and this lack of proper care actually caused the loss to the property.

An example of proximate cause: a civilian employee is the last person to leave the building and although he has a key, does not lock the door, leaving the building unsecured. A thief walks into the unlocked door and steals a Government laptop computer in one of the offices, which cannot be individually secured. The laptop has a value of \$2,000. One twelfth of the employee’s annual salary is \$2,850. That individual

is likely to be held financially liable for the full value of the laptop because his negligence (failure to secure the building) caused the loss of government property and the value of the loss is less than the monthly pay. Contrast this with the following scenario: the same employee again fails to lock the building and the same Government computer is stolen. This time, however, the thief gains entry into the building by breaking a locked window in the rear of the building, not knowing that the front door is unlocked. The employee will most likely not be held financially liable for the loss because although he was negligent in leaving the door unlocked, his negligence did not cause the loss.

It may be difficult for individuals to understand the process and the legal standards applied, but your local Office of the Staff Judge Advocate (OSJA) is available to assist individuals and agencies alike to ensure fairness to everyone involved. Attorneys in the Legal Assistance Office are available to assist service members and civilian employees that are the financial targets of reports of survey. Attorneys in the Procurement and Administrative Law Branch of OSJA are available to assist survey officers, who are service members or civilian employees appointed to investigate the loss, damage, or destruction of government property.

Survey officers should visit an Administrative Law Attorney prior to beginning the ROS investigation to receive information and guidance on conducting the investigation. Visiting an attorney first will give the survey officer important information and background to ensure the correct legal standard is applied and proper procedures are followed. This will save time because when a survey officer recommends financial liability, but did not follow proper procedures, he can look forward to getting the ROS back for additional work upon review by an Administrative Law Attorney.

Some common mistakes that survey officers make that require the ROS to be returned are: failing to state how conflicting evidence was resolved if relied upon to reach the findings and recommendation; not properly calculating depreciation if an item that was lost or destroyed is subject to depreciation; relying on speculation or personal opinion instead of facts to arrive at a recommendation; or failing to explain a delay in completion of the ROS in the specified time frame if the ROS is completed in more time than the regulation allows. Speaking with an attorney before hand will help avoid some of these pitfalls.

Once a soldier or civilian employee is notified that the survey officer has recommended him or her for financial liability, the individual may seek advice from a Legal Assistance Attorney. The attorney may assist the individual in preparing a rebuttal statement to the recommendation, which is then treated by the survey officer as evidence that must be considered with everything else in the ROS. If the individual acknowledges responsibility, he or she may seek assistance on drafting a request for waiver or reduction of the liability.

The ROS is a unique creature and can become complicated, but with patience and assistance from the Office of the Staff Judge Advocate, it can be a smooth and easy process for all parties.